



INTERIOR BOARD OF INDIAN APPEALS

Virginia McGilbray, et al. v. Acting Southern Plains Regional Director,
Bureau of Indian Affairs

41 IBIA 135 (07/13/2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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VIRGINIA MCGILBRAY, THOMAS	:	Order Vacating and Remanding
JOHNSON, ROBERT THOMPSON,	:	Decision
MARIE SAWYER, WYNEMA BROWN,	:	
KATHLEEN CANNON, AND	:	
EARL YEAHQO,	:	
Appellants,	:	
	:	Docket No. IBIA 04-76-A
v.	:	
	:	
ACTING SOUTHERN PLAINS REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	July 13, 2005

Appellants appealed from a February 10, 2004, decision of the Acting Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA). In her decision, the Regional Director refused to consider Appellants' Statement of Reasons for their appeal from an August 19, 2003, decision of the Anadarko Agency Superintendent because the Statement was signed by an individual "for" Appellants' counsel, rather than by Appellants' counsel personally. The Regional Director then decided against Appellants on the merits for failing to meet their burden of proof. The underlying appeal involves a tribal leadership dispute within the Kiowa Tribe of Oklahoma. 1/

During briefing, the Board requested that the Regional Director address how her decision could be sustained in light of Board precedent such as Elofson-Gilbertson v. Northwest Regional Director, 37 IBIA 284, 288 (2002). On June 21, 2005, the Board received the Regional Director's answer brief, which suggests that remand back to the Regional Director for reconsideration is appropriate. Appellants did not file a reply to the Regional Director's suggestion for a remand.

The Board agrees that this matter should be remanded for reconsideration.

1/ Appellants McGilbray, Johnson, Thompson, and Sawyer contend that they are members of the Kiowa Hearing Board. Appellants Brown, Cannon, and Yeahquo contend that they are members of the Kiowa Business Committee.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board vacates the Regional Director's February 10, 2004, decision and remands the matter for reconsideration. 2/

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Anita Vogt
Senior Administrative Judge

2/ During these proceedings, the Regional Director moved to dismiss the appeal as moot. The Board denied the motion based on insufficient evidence. See May 24, 2005, Order Denying Motion to Dismiss and Order to Resume Briefing. On June 10, 2005, the Board received a filing from the Tribe, contending that the appeal is moot. On remand, the Regional Director may address whether Appellants' appeal from the Superintendent's Aug. 19, 2003, decision has become moot.